IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

WP(C).No. 6400 of 2004(J)

PETITIONER:

THE SUB DIVISIONAL INSPECTOR OF POST OFFICES, CHERTHALA SUB DIVISION, CHERTHALA.

BY ADV. SRI.S.KRISHNAMOORTHY, ADDL.CGSC

RESPONDENTS:

K.K.SHIJI, EDDA, PALLIPPURAM POST OFFICE CHERTHALA 688 541, RESIDING AT KUNNELVELI HOUSE, PALLIPPURAM P.O. CHERTHALA 688 541.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 6400/2004 J

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE STATEMENT DT. 08/06/02 FILED BY THE RESPONDENT.

EXT.P2. COPY OF THE WRITTEN STATEMENT DT. 17/7/02 FILED BY THE PETITIONER.

EXT.P3. COPY OF THE AWARD IN IA NO. 1/2002 DT. 31/07/03 OF THE CENTRAL GOVT. LABOUR COURT ERNAKULAM.

RESPONDENT'S EXHIBITS **NIL.**

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KURIAN JOSEPH J.

Writ Petition (Civil) No.6400 of 2004

Dated 26th November, 2007.

J U D G M E N T

Ext.P3 award passed by the Central Government Labour Court, Ernakulam in I.D.1/02 is under challenge. The issue referred for adjudication is whether the action of the petitioner in terminating the respondent from the post of Extra-Departmental Delivery Agent (EDDA) at Pallipuram Post Office with effect from 12.1.2000 is just, fair and legal. The award is passed answering the reference in favour of the respondent. Hence the writ petition.

2. Sri.Krishna Moorthy, learned counsel appearing for the petitioner submits that the respondent was engaged only as a substitute EDDA in the place of one Sri.V.S.Viswanathan, and that is not disputed also. When the post was filled up by a regular hand, the termination of the provisional hand was inevitable. Since the action thus taken being in accordance with the rules (Extra Departmental Agents (Conduct and Service Rules, 1964) governing such provisional appointment, it cannot be said that there is violation of the provisions of the Industrial Disputes Act, 1947. It is to be noted that the respondent did not have a case

that there is violation of the provisions governing his appointment. The establishment thus being governed by separate rules, it has to be excluded from the purview of the expression 'industry', for the purpose of benefits under the provisions of the Industrial Disputes Act, 1947. The engagement of the respondent was only provisional, by way of an interim arrangement, till a regular hand is appointed. The regular hand having been appointed, the respondent had necessarily to be disengaged. These crucial aspects have not been appreciated in the proper perspective by the Labour Court. The Labour Court, comparing the establishment with the Telecom Department, held that the Postal Department is an industry. But the Labour Court omitted to take note of the fact that the engagement of the respondent was in accordance with the EDA Rules and the termination also was in accordance with the said rules. In that view of the matter, the finding regarding violation of Section 25F of the Industrial Disputes Act, 1947 is clearly illegal and perverse. The award is hence set aside.

KURIAN JOSEPH, JUDGE.

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